

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

True the Vote, Jane Coln, Brandie Corroero,	§
Chad Higdon, Jennifer Higdon, Gene	§
Hopkins, Frederick Lee Jenkins, Mary	§
Jenkins, Tavish Kelly, Donna Knezevich,	§
Joseph Knezevich, Doris Lee, Lauren Lynch,	§
Norma Mackey, Roy Nicholson, Mark	§
Patrick, Julie Patrick, Paul Patrick, David	§
Phillee, Grant Sowell, Sybil Tribble, Laura	§
VanOvershelde, and Elaine Vechorik	§
	§
Plaintiffs,	§
v.	§
	§
The Honorable Delbert Hosemann, in his	§
official capacity as Secretary of State for the	§
State of Mississippi, The Republican Party of	§
Mississippi, Copiah County, Mississippi	§
Election Commission, Hinds County,	§
Mississippi Election Commission, Jefferson	§
Davis County, Mississippi Election	§
Commission, Lauderdale County,	§
Mississippi Election Commission, Leake	§
County, Mississippi Election Commission,	§
Madison County, Mississippi Election	§
Commission, Rankin County, Mississippi	§
Election Commission, Simpson County,	§
Mississippi Election Commission, and Yazoo	§
County, Mississippi Election Commission	§
	§
Defendants.	§

Cause No. 3:14-cv-00532-NFA

BENCH BRIEF ON THE APPLICATION OF THE NVRA TO POLLBOOKS

In consideration of the July 24, 2014 hearing, Plaintiffs True the Vote, et. al. submit this bench brief indicating pollbooks are contemplated by, and therefore protected by, the National Voter Registration Act (“NVRA”) based on at least two provisions within the NVRA:

1. Pollbooks are records relevant to maintaining accurate and current voter rolls.

Pollbooks are utilized at polling locations to ensure that a voter has been registered to vote before casting a ballot, and to prevent “double voting.” Thus, the pollbook is specifically contemplated by the following provision of the NVRA:

(i) Public disclosure of voter registration activities

- (1) Each State shall maintain for at least 2 years and shall make available for photocopying at a reasonable cost, **all records** concerning the implementation of programs and activities conducted for the purpose of **ensuring the accuracy and currency of official lists of eligible voters**[.]

See 42 U.S.C. § 1973gg-6(i).

Pollbooks are utilized to ensure the “accuracy and currency of official lists of eligible voters” because they are the lists which are checked at polling locations for registration and eligibility. First, pursuant to Mississippi Statue, “the pollbooks will show only the names of those qualified to vote at such election.” *See* MISS. CODE ANN. § 23-15-125. In fact, “[w]hen election commissioners determine that any elector is disqualified from voting, by reason of removal from the supervisors district, or other cause, that fact shall be noted on the registration book and his name shall be erased from the pollbook.” *Id.* Thus, the pollbook is specifically contemplated, in Mississippi, “to ensure the accuracy and currency of official lists of eligible voters.” *See id.*; *see also Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012) (finding that the process of reviewing completed voter materials, such as pollbooks, constitutes a “program” or “activity” of evaluating voter records “for the purpose of ensuring the

accuracy and currency of official lists of eligible voters”). And, in the Mississippi Senate Republican Primary run-off, the pollbooks were utilized to determine whether a voter had already voted in the Democratic Primary and therefore could not vote in the Republican Party’s run-off. Thus, the pollbooks are specifically protected for at least 2 years by the State under the NVRA.

2. The NVRA requires reference to pollbooks to effect its removal provisions.

Other provisions of the NVRA too indicate the NVRA applies to pollbooks. The NVRA requires States to remove ineligible voters from voting rolls. *See* 42 U.S.C. § 1973gg-6(d). The Act provides that a name may not be removed from a voter registration roll unless specific circumstances permit. *See id.* One ground for removal occurs when a voter does not respond to a registration notice and does not appear for voting for two years. *See* 42 U.S.C. § 1973gg-6(d)(1). The most accurate way to determine whether a voter has appeared in the prior two years to vote in a federal election is by reviewing the pollbook (which a voter signs in on at a voting location). The NVRA addresses pollbooks as follows:

(d)(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

...(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar’s record of the registrant’s address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

42 U.S.C. §1973gg-6(d)(1)(B). Thus, the foregoing indicates the NVRA unquestionably applies to, protects, and requires public disclosure of, pollbooks.

Date: July 22, 2014

Respectfully submitted,

/s/ L. Eades Hogue

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2014 a copy of the foregoing instrument was served on The Republican Party of Mississippi; the Copiah County, Mississippi Election

Commission; the Hinds County, Mississippi Election Commission; the Jefferson Davis County, Mississippi Election Commission; the Lauderdale County, Mississippi Election Commission, the Leake County, Mississippi Election Commission, the Madison County, Mississippi Election Commission and The Honorable Delbert Hosemann; via the Court's ECF e-file service. Plaintiffs have served remaining Defendants, who have not yet registered to the Court's ECF system for this matter, via United States Postal Service, in accordance with Federal Rules of Civil Procedure.

/s/ L. Eades Hogue